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4 KEVIN LEE McCULLOM,
5 Plaintiff,

6 v.
7

8 SEAN WHENT, et. al.,
9 Defendants.
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11 Case No. 15-cv-5718-TEH
12

13 ORDER DENYING MOTION TO
14 DISMISS
15

16 Dkt No. 54
17

18 Defendants filed a motion for summary judgment on August 18,
19 2016. Plaintiff has been granted several extensions and his
20 opposition was to be filed by December 18, 2016. Plaintiff did
21 not file an opposition but did file a motion to dismiss without
22 prejudice because he failed to exhaust.
23

24 Defendants' motion for summary judgment does not raise
25 exhaustion, rather discusses the merits of Plaintiff's claim
1 regarding tampering with his mail and denial of access to the
2 courts. Because Defendants' have already filed a motion for
3 summary judgment and have not stipulated to the dismissal,
4 Plaintiff's motion to dismiss without prejudice (Docket No. 54)
5 is DENIED. See Fed. R. C. P. 41(a)(1)(A).
6

7 Plaintiff has already had more than four and a half months
8 to file an opposition. He will be provided one final extension
9 and must file the opposition by January 18, 2017. No further
10 extensions will be provided and failure to file an opposition may
11

1 result in the dismissal of this action.

2 **IT IS SO ORDERED.**

3 **Dated: 1/4/2017**

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5 **THELTON E. HENDERSON**
6 **United States District Judge**

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